

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: **DAVID FRANKLIN MOREHEAD**
Arkansas Bar ID #89143
CPC Docket No. 2007-058

FILED

SEP 28 2007

LESLIE W. STEEN
CLERK

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Evelyn Crow on April 18, 2007. The information related to the representation of Ms. Crow in 2005-2007 by Respondent David Franklin Morehead, an attorney practicing primarily in Pine Bluff, Jefferson County, Arkansas. On May 29, 2007, Respondent Morehead was served with a formal complaint, supported by affidavits from Evelyn Crow and Denise Parks. Respondent failed to file a timely response to the Complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

Evelyn Crow went to see David Morehead, about filing a Chapter 7 bankruptcy case for her. She was told the filing fee would be \$209.00. She paid him \$100.00 on October 12, 2005, and the balance of \$109.00 on January 3, 2006. She gave him all the personal and financial information he requested. On October 13, 2005, in time to be under the old bankruptcy law which was expiring on October 17, 2005, he filed her petition and schedules as No. 05-bk-26197. Ms. Crow was notified of two court dates for her meeting of creditors. Either Mr. Morehead or his office told her to disregard the first date and to go on the second date. When she went to court on that date, believed to be December 15, 2005, she was told her case had been dismissed. She

went to Mr. Morehead's office on January 13, 2006, and paid the \$109 balance she owed on her filing fee. She understood he was going to refile her case.

She went to his office several times up to mid-2006 checking on her case. She was usually told he was working on it. He re-entered her information in the computer on the case, but she never received any letter about going to court. She called his office a number of times about her case, but received no return calls. She went to his office on February 15, 2007, but was told he was not in and she was not provided any information about her case. The same thing happened to her on February 26, 2007. At the time of the filing of this formal disciplinary complaint, he still had her papers she took him and her \$209 for the filing fee, which he never expended for her case, and she has no bankruptcy proceeding.

Mr. Morehead failed to pay his 2006 Arkansas Supreme Court attorney's license fee, due by March 1, 2006, until June 6, 2006. He failed to pay his 2007 Arkansas Supreme Court attorney's license fee, due by March 1, 2007, until May 16, 2007. As a result of these actions, his Arkansas law license was in automatic suspension status from March 2 - June 6, 2006, and from March 2 - May 16, 2007. He practiced law in bankruptcy court during these periods.

Upon consideration of the formal complaint and attached exhibit materials, the untimely response to it, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. Mr. Morehead's conduct violated Rule 1.1 in that, by failing to pay her filing fee and causing her case to be dismissed shortly after he filed it for her, and by failing thereafter to pay her filing fee and get her case reinstated or reopened, he failed to be thorough enough in his representation of Evelyn Crow in her bankruptcy case to provide her competent legal

representation. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Mr. Morehead's conduct violated Rule 1.3 in that after receiving notice from the court of the November 25, 2005, dismissal of Evelyn Crow's bankruptcy case due to his failure to pay her filing fee, he failed to act with reasonable diligence thereafter by not paying her filing fee, from her funds he held, and getting her case reopened or reinstated so she might seek and obtain the legal relief she sought. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Mr. Morehead's conduct violated Rule 1.4(a)(3) in that after November 25, 2005, he failed to keep Evelyn Crow reasonably informed about the status of her bankruptcy matter. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

D. Mr. Morehead's conduct violated Rule 1.4(a)(4) in that after November 25, 2005, he failed to comply with Evelyn Crow's reasonable requests for information about the status of her bankruptcy matter. Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.

E. Mr. Morehead's conduct violated Rule 1.16(d) in that since he effectively abandoned Evelyn Crow, sometime after November 25, 2005, he has failed to refund to her the \$209.00 she paid him for her bankruptcy case filing fee, funds which he never expended for that stated purpose. Arkansas Rule 1.16(d) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving

reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

F. Mr. Morehead's conduct violated Rule 3.3(a)(1) in that he knowingly made a false statement of fact to the bankruptcy court in his bankruptcy filing for Evelyn Crow on October 13, 2005, in No. 05-bk-26197, when he falsely certified to the court in her Statement of Financial Affairs, in Item 9, that she had made "None" payments to any attorney related to relief under the bankruptcy law or preparation of a petition in bankruptcy within one year before filing her case, and when he falsely certified to the court in his Disclosure of Compensation of Attorney for Debtor, in Item 1, that prior to filing that Statement, he had received "\$0.00" funds from Ms. Crow, knowing she had already paid him \$100.00 on her case. Arkansas Rule 3.3(a) requires that a lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal; or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

G. Mr. Morehead's conduct violated Rule 3.4(c) in that he failed to pay his 2006 Arkansas bar license fee by March 1, 2006, and he failed to pay his 2007 Arkansas bar license fee by March 1, 2007, as required by Arkansas Supreme Court Rule VII.C, Rules Governing Admission to the Bar. Arkansas Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

H. Mr. Morehead's conduct violated Rule 5.5(a) in that he failed to pay his 2006 Arkansas Bar license fee by March 1, 2006, resulting in the suspension of his law license until

June 6, 2006, when he paid his 2006 license fee, and he failed to pay his 2007 Arkansas Bar license fee by March 1, 2007, resulting in the automatic suspension of his Arkansas law license until May 16, 2007, when he paid his 2007 license fee. He practiced law during both periods while his license was suspended during this period. Arkansas Rule 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

I. Mr. Morehead's conduct violated Rule 8.4(c) in that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in his bankruptcy filing for Evelyn Crow on October 13, 2005, in No. 05-bk-26197, when he falsely certified to the court in her Statement of Financial Affairs, in Item 9, that she had made "None" payments to any attorney related to relief under the bankruptcy law or preparation of a petition in bankruptcy within one year before filing her case, and he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in his bankruptcy filing for Evelyn Crow on October 13, 2005, in No. 05-bk-26197, when he falsely certified to the court in his Disclosure of Compensation of Attorney for Debtor, in Item 1, that prior to filing that Statement, he had received "\$0.00" funds from Ms. Crow, knowing she had already paid him \$100.00 on her case. Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

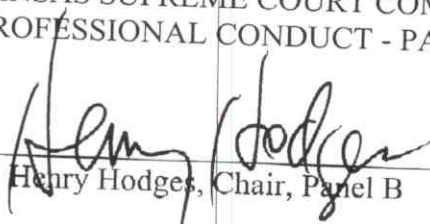
J. Mr. Morehead's conduct violated Rule 8.4(d) in that his failure to competently and timely pursue her bankruptcy petition and relief for Evelyn Crow, has resulted in her losing the opportunity to receive bankruptcy relief and debt discharge under the provisions of the former bankruptcy law that was superceded October 17, 2005, and now exposed her to collection efforts

by dischargeable creditors. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice;

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that the Arkansas law license of **DAVID F. MOREHEAD**, Arkansas Bar ID# 89143, be, and hereby is, **SUSPENDED FOR TWO (2) MONTHS** for his conduct in this matter, **FINED \$1,500.00, ORDERED TO PAY \$209.00 RESTITUTION** for the benefit of Evelyn Crow, and he is assessed Committee case costs of \$50.00. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court, and shall be concurrent from its effective date with any other suspension on Respondent now in effect. The fine, restitution, and costs assessed herein, totaling \$1,759.00, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: _____


Henry Hodges, Chair, Panel B

Date: _____

August 29, 2007